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# What Fractures Political Unions? Failed Federations, Brexit and the Importance of Political Commitment

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*(The final version of this article will appear in the European Law Review)*

## Introduction

Almost fifteen years ago, the Laeken Declaration on the Future of the European Union (EU thereafter) highlighted the importance of ‘mutual solidarity’ among the Member States for the European integration project.<sup>1</sup> It noted that ‘Europe is the continent of solidarity’.<sup>2</sup> The Lisbon Treaty made this denotation of Europe real by amplifying the scope of solidarity; it was no longer confined to the Member States, but it was extended to peoples (Article 1 and 3(5) TEU) and to generations (Article 3(3) para 2 TEU).<sup>3</sup> A Europe of comprehensive solidarity<sup>4</sup> at the end of the first decade of the new millennium thus seemed to realise the promise of the Schuman Declaration (9 May 1950) which gave birth to European integration: ‘Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.’<sup>5</sup>

The Brexit outcome of the referendum on the United Kingdom’s continued membership of the EU on the 23 of June 2016 suspended the vision of a ‘Europe of solidarity’ and made the fragmentation of the EU both thinkable and real. In the process of its disentanglement from the European Union, the United Kingdom seeks the retreat of solidarity within national borders and the uncoupling of the British society from ‘the society of the peoples of the Union’.<sup>6</sup> This is an unprecedented development in the process of European unification; the latter has seen pauses but no retreats.<sup>7</sup>

This is a new territory for theories of European integration as well. Premised on an assumed willingness on the part of the Member States to participate in transgovernmental or supranational arrangements, their theoretical repertoire has explained intergovernmental dissent, stagnation, spill backs, incrementalism, differentiated integration and so on. But

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<sup>1</sup> Laeken European Council, 14-15 December 2001, Annexes to Presidency Conclusions, Annex 1, SV 300/1/01 REV1, at 19.

<sup>2</sup> *Id* at 20.

<sup>3</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, December 13, 2007, 2007 O.J. (C 306) 1.

<sup>4</sup> Dora Kostakopoulou, “Liberalism and Societal Integration: In Defence of Reciprocity and Constructive Pluralism” (2014) 43 *Netherlands Journal of Legal Philosophy* 127.

<sup>5</sup> The Schuman Declaration, [https://europa.eu/european-union/about-eu/symbols/europe.../schuman-declaration\\_en](https://europa.eu/european-union/about-eu/symbols/europe.../schuman-declaration_en).

<sup>6</sup> Opinion of Advocate General Maduro at para. 23, Case C-499/06, *Halina Nerkowska v. Zakład Ubezpieczeń Społecznych* (February 28, 2008), ECLI:EU:C:2008:132, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-499/06#>.

<sup>7</sup> Article 50 TEU has not been activated before and thus there has been no precedent in the EU’s institutional memory.

adjustments are needed in order to account for the British 'no to Europe' and the muscular discourse on the repatriation of powers from the EU to the Member States in the present socio-political and economic conjuncture. The UK is not the only Eurosceptic voice; governmental elites in the new Member States, such as Poland, the Czech Republic, Hungary and Slovakia, and non-governmental political elites in the Netherlands and France find an opportunity to express their intergovernmental vision of the EU and to re-assert the national muscle.

Looking at the withdrawal of the United Kingdom from the European Union through the lens of a historical discursive approach and revisiting an older question posed by Franck et al.,<sup>8</sup> namely, why federations fail, are the aims of this article. The subsequent discussion highlights the role of political commitment to the success or the failure of a political Union and suggests a reconsideration of the situated agency in processes of political fission. This has implications for European Union and the position it will adopt in the withdrawal negotiations following the activation of Article 50 TEU as well as for regional integration theory and practice.

The discussion is structured as follows. The first section embarks upon a brief exploration of old and new theories of European integration with reference to the Brexit developments. In the second section, I defend the merits of a historical discursive approach by examining the work of Franck et al. on failed federations and the roots of the British Eurosceptic opposition to Europe. I draw the implications of this for Britain, the European Union and integration theory, which needs to pay more attention to micro-variables and ideology, in sections 3, 4 and 5, respectively. The concluding remarks are contained in the last section of the article.

### **Where Old and New European Integration Theories Succeed and Fail**

European integration has been one of the most novel and complex political experiments in the world and, naturally, it has sparked an astonishingly rich and sophisticated research activity.<sup>9</sup> To the three 'classical' theories of European integration and their various modulations, namely, intergovernmentalism/liberal intergovernmentalism,<sup>10</sup> federalism,<sup>11</sup> functionalism/neofunctionalism,<sup>12</sup> was added what may be called the 'fourth force' in European integration theorising. The latter refers to the coalescence of various perspectives and

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<sup>8</sup> T. M. Franck, G. H. Flanz, H. J. Spiro and F. N. Trager, *Why Federations Fail: An Inquiry into the Requisites for Successful Federalism* (New York: New York University Press, 1968).

<sup>9</sup> For an overview of the wide-ranging theoretical perspectives, see B. Rosamond, *Theories of European Integration* (Houndmills: Palgrave Macmillan, 2000); M. Pollack, "Theorising the European Union: International Organisation, Domestic Polity or Experiment in New Governance?" (2005) 8 *Annual Review of Political Science* 357, 357-98; S. Saurugger, *Theoretical Approaches to European Integration* (Houndmills: Palgrave Macmillan, 2013).

<sup>10</sup> See A. Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca, NY: Cornell University Press, 1998).

<sup>11</sup> M. Burgess and A.-G. Gagnon (eds.), *Comparative Federalism and Federation: Competing Traditions and Future Directions* (Hemel Hempstead: Harvester Wheatsheaf, 1993).

<sup>12</sup> D. Mitrany, "The Functional Approach to World Organisation" (1948) 24(3) *International Affairs* 350, 350-63). Neofunctionalism transcended the functionalist distinction between technical and political processes and pioneered the notion of the spill-over effect of integration; E. Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-7* (Stanford, CA: Stanford University Press, 1958). Both Haas and Schmitter enriched the model by developing the concepts of spill-back, spill-around and muddle-about; P. C. Schmitter, "Three Neo-Functional Hypotheses about European Integration" (1969) 23(1) *International Organisation* 161, 161-66.

approaches that developed mainly in the 1990s and coincided with the ‘political turn’ of the EU.<sup>13</sup> These include: multilevel governance, comparative politics, policy-making approaches, policy networks and the regulatory paradigm, new institutionalism, constructivism and more recently actor-network and practice theories.<sup>14</sup> The three classical approaches emerged and developed as a result of looking at European integration and the European Community/the European Union from the outside in. They were keen to depict distinct centres of power and hierarchical relations, and remained much more embedded into the nation-state’s vocabulary and assumptions. In contrast, the fourth force developed as a result of looking at European integration from the inside out. Accordingly, these approaches tend to view the EU on more heterarchical and acentric terms and have been more confident in terms of pulling back from statist perspectives.<sup>15</sup> So whereas the ‘old’ theories are characterised by dichotomic thinking, such as intergovernmentalism v supranationalism and either/or dilemmas, such as, ‘more’ or ‘less’ ‘Europe’ and the advantages or disadvantages of competence rebalancing exercises, the strands of the ‘fourth force’ paradigm tend to be less interested in dichotomies and more interested in studying the connectivity among the various layers of governance, synergies and forms of reflexive governance.

The ‘crises’ that have dominated the European political landscape over the last few years, be they economic, migration and refugee-related, and the rise in Euro-scepticism and populism demonstrated that European integration does not evolve along a singular and linear dynamic. Nor does it evolve in a dialectic way; conflicts and their negation do not lead to a new synthesis. Change is ever unfolding and more often than not there is no alternative to changing institutional courses or changing rules in the middle of ‘the game’. Seeking to reduce these dynamics to a concrete and final template cannot but be an intentional act of simplification. Although it has recently become apparent that attention needs to be put on opportunities for reform, experimentation and institutional innovation, institutional change remains under-researched.

The Brexit referendum outcome brought about the reality of a break-up of the European Union and significant destabilisation. The ‘unthinkable’ has taken place. Using the existing theoretical lenses in order to account for such an unprecedented challenge might not be very helpful. In addition, the real possibility of its contagion among the other Member States shows that Brexit should not be relegated into a footnote to an overall positive blueprint. One needs to understand what Brexit is about and the ideological roots of the present British Government’s opposition to Europe. Intergovernmentalism and liberal intergovernmentalism could accommodate this development within their state-centric paradigm, but even these theories are

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<sup>13</sup> Rosamond, *supra* note 9, has used the phrase “theorising the ‘New Europe’”; see chapter 5 at p. 98.

<sup>14</sup> J. Peterson and Elizabeth Bomberg, *Decision-Making in the European Union* (Basingstoke: Macmillan, 1999); R. Rhodes, “The New Governance: Governing without Government” (1996) 44(4) *Political Studies* 652, 652-67; T. Christiansen, K. E. Jorgensen, and A. Wiener, *The Social Construction of Europe* (London: Sage, 2001); J. Jupille, J. A. Caporaso, and J. T. Checkel, “Integrating Institutions: Rationalism, Constructivism and the Study of the European Union” (2003) 36(1) *Comparative Political Studies* 7, 7-40; G. Majone, “The Rise of the Regulatory State in Europe” (1994) 17(3) *West European Politics* 77, 77-101; C. Bueger and J. Stockbruegger, “Actor-Network theory: Objects, Actants, Networks and Narratives”, in Daniel R. McCarthy (eds.), *Technology and World Politics: An Introduction* (Abingdon: Routledge, 2016); R. Adler-Nissen and K. Kropp, “A Sociology of Knowledge Approach to European Integration: Four Analytical Principles” (2015) 37(2) *Journal of European Integration* 155, 155-173; R. Adler-Nissen, “Towards a Practice Turn in EU Studies: The Everyday of European Integration” (2015) 54(1) *Journal of Common Market Studies* 87, 87-103.

<sup>15</sup> Dora Kostakopoulou, “Towards a theory of Constructive citizenship in Europe” (1996) 4(4) *Journal of Political Philosophy* 337, 337-58 (1996); R. Howse and K. Nicolaidis, “Democracy without Sovereignty: The Global Vocation of Political Ethics”, in T. Broude and Y. Shany (eds) *The Shifting Allocation of Authority in International Law* (Oxford: Hart, 2008).

built on the assumption that Member States wish to co-operate and to reduce transaction costs within a broader political framework of conferred (or pooled) powers. Similarly, the new theories of European integration might find it difficult to account for the British 'no to Europe'. They have highlighted the vectorial dimension of the EU governance, the Europeanisation of national legislation, that is, its adaptation to the European Union laws and policies<sup>16</sup>, the constructive effect of EU institutions, policies and norms on national polities<sup>17</sup> and on the socialisation of political actors,<sup>18</sup> but the decisive effects of contingent events and happenings, such as Brexit, cannot be neatly mapped onto them. In this respect, a more historical perspective might offer valuable insights in understanding the recent centrifugalism and fission in the European Union.

### **Accounting for fission: a historical discursive approach**

In the foregoing section, the discussion unravelled the merits of 'old' and 'new' theorising on European integration and set the scene for the development of an historical discursive approach which could help us to understand Brexit and the policy dilemmas it has generated. Interestingly, the 'let's take back control' campaign in the United Kingdom exposes a battle of ideas, defects in leadership and short-term self-serving ambitions on the part of certain politicians which have already taken place in the past. These resulted in the abortion of cooperative political arrangements several decades ago which could have changed the course of world history, as follows.

#### *I. 'Why Federations Fail': the importance of a political commitment to the ideal of a Union*

Why do federations fail? This was the title of a book published in 1968 by Thomas Franck et al.<sup>19</sup> It was the product of research on the requisites for successful federalism conducted under the auspices of the Centre for International Studies at New York University. The authors were interested in identifying all those constitutional and non-constitutional factors which were responsible for four failed regional unification initiatives in the 1950s and the 1960s in the non-Western world: namely, the West Indies, East Africa, Malaysia and Rhodesia-Nyasaland. By conducting such a 'post-mortem' inquiry, they wished to explain 'why federations fail' and, by so doing, to furnish suggestions for the normative preconditions for the success of political federalist experiments around the world.

Franck researched the East African Federation, Herbert Spiro worked on the Federation of Rhodesia and Nyasaland, while Gisbert Flanz and Frank Trager examined the West Indies and

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<sup>16</sup> T. Börzel and T. Risse, "Conceptualising the Domestic Impact of Europe" in K. Featherstone and C. M. Radaelli (eds), *The Politics of Europeanisation* (Oxford: Oxford University Press, 2003).

<sup>17</sup> *Id.* More attention to the micro-level and the everyday experiences of European citizens has been paid by recent sociological literature: J. Diez Mendrano, "The public sphere and the European Union's political identity" in J. T. Checkel and P. J. Katzenstein (eds.), *European Identity* (Cambridge: Cambridge University Press, 2009); A. Favell and V. Guiraudon, "The Sociology of the European Union: An Agenda" (2009) 10(4) *European Union Politics* 550, 550-76.

<sup>18</sup> Christiansen et al., *supra* note 14.

<sup>19</sup> T. Franck et al., *supra* note 8.

the Federation of Malaysia, respectively. These four cases represented ‘four experiments in creative federalism at the end of the same imperial connection’<sup>20</sup> and were seen to capture perfectly the tensions between centralist and decentralist forces as well as the battle between ‘mercantilist federalists’ and ‘tribal nationalists’.

In their comparative research, Franck et al. sought to examine the contribution of ‘institutional essentials’ as well as personal and psychological factors to the success or the failure of a federation. The former included a consideration of two sets of factors. Firstly, the role played by the constitution of a country and the extent to which it allowed a balance between powers that could be transferred and powers which could be reserved by the states. Secondly, the influence of non-constitutional factors such as, religion, culture, language and the distribution of resources. The personal and psychological factors, on the other hand, included a focus on the personal qualities of the elites that were in power or mattered, such as, their charisma, commitment, friendships, rivalries, and personal ambitions. Such a dual focus, that is, both macro- and micro-political, enabled a comprehensive examination of both structural and agency-related variables and the role of ‘time’ or to be more precise of ‘bad timing’ and economic opportunism. And although in the introduction to the book Frank Trager argued that ‘in the final analysis we cannot know – in the scientific sense- all the “essential” elements which hold the “cement” of a system together or cause it to fissure and break’,<sup>21</sup> all agreed that the federalist experiments they examined failed because ‘no one who mattered was sufficiently committed to their success’.<sup>22</sup>

The singling out among the factors responsible for failure of ‘the absence of a positive commitment to the ideal of partnership’<sup>23</sup> and even an ideological rejection of the federal ideal is very important. Indeed, in the context of the West Indies, Flanz argued that ‘the basic problems of the federation were caused by geographical and historical factors, which were aggravated by deep-rooted attitudes of insularism and petty nationalism. These divisive forces were reinforced by economic factors’.<sup>24</sup> Jamaica withdrew from the West Indian Federation following a referendum which took place on 19 September 1961 and saw 55 per cent of the participants voting against remaining in the federation. The referendum was called following the enactment of the Federal Referendum Bill by the Federal House of Representatives. The latter was later seen as a serious political misjudgement by the Prime Minister, Mr Manley, who had campaigned in favour of Jamaica’s continued membership, but was rather quick to accept the ‘mandate of the people’ following the referendum.<sup>25</sup> He had faced stiff opposition by the leader of the Jamaican Labour Party, Sir Alexander Bustamante, whose anti-federation campaign exploited the domestic economic concerns of the Jamaican people and their dissatisfaction with the government. One cannot but be surprised by the similarities with the Brexit referendum and its aftermath. Indeed, Franz includes data on Sir Alexander Bustamante’s anti-federation

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<sup>20</sup> *Id.* at ix.

<sup>21</sup> *Id.* at xv.

<sup>22</sup> *Id.* at p. 83.

<sup>23</sup> *Id.* at p. 83.

<sup>24</sup> *Id.* at p. 104.

<sup>25</sup> *Id.* at pp. 102 and 114.

campaign: 'during the referendum campaign they insisted that an independent Jamaica would cost its taxpayers £ 200,000 (\$560,000) less than Jamaica in the Federation'.<sup>26</sup> The idea of a costly membership which would probably require increased levels of domestic taxation did not attract votes.<sup>27</sup> Notwithstanding this, the result of the referendum was quite close.

In the four federalist initiatives, the ruling elites' commitment to the 'common good' of public Unions<sup>28</sup> and belief in the value of political and economic integration were missing. Instead, nationalist ideology coupled with personal political ambition dictated the political choices of governments. Franck concluded: 'the absence of a positive political or ideological commitment to the primary goal of federation as an end in itself among the leaders and people of each of the federating units did in all four instances, make success improbable, if not impossible. This was the one consistent factor found in the four federal failures.'<sup>29</sup> And he continued: 'the principal cause for failure, or partial failure, of each of the federations studied cannot, it thus seems, be found in an analysis of economic statistics or in an inventory of social, cultural, or institutional diversity. It can only be found in the absence of a sufficient political-ideological commitment to the primary concept or value of federation itself.'<sup>30</sup>

The absence of a clear political and ideological commitment to the European Union has been an enduring feature of the British Conservative Party's Eurosceptic wing. Nationalism coupled with the belief that the 'dominocracy' of domestic executives should not be challenged or compromised by political and judicial decision-making above, or beyond, the nation-state have characterised its opposition to the European unification project for decades. In the past, these 'winds of doctrine'<sup>31</sup> blew at the fringes of the British political landscape. The demise of the Labour Party's hold on political power opened the way for their impact on the intellectual temper of the British political scene.

The economic crisis and austerity policies coupled with an increased opposition to migration from the new Eastern European Member States facilitated the reception of such ideas by the larger population. In what follows, I wish to shed light onto the roots of the 'Let's take back control' opposition to Europe. The ideational anchoring of British Euroscepticism shows the persisting absence of a political commitment to the vision of an integrated Europe. Political elites' national-state centrism was not premised on a desire for improved 'two level games',<sup>32</sup> that is, the reform of the multiple and complex games between the EU and the Member States,

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<sup>26</sup> *Id.* at p. 101.

<sup>27</sup> Similarly, the British Vote Leave campaign included the misleading claim that leaving the EU would result in a £ 350m weekly windfall for Britain. This claim gave rise to criticism by the UK Statistics Authority. Its head, Sir Andrew Dilnot, noted that such claims undermine trust in official statistics; cited by Nigel Morris, 'Rival campaigns criticised for misleading public on Brexit', *METRO*, Saturday 28 May 2016, at 8.

<sup>28</sup> P. Reinsch, "International Administrative Law and National Sovereignty" (1909) 3 *American Journal of International Law* 1. For an excellent account on the emergence of functionalism in international relations, see J. Klabbers, "The Emergence of Functionalism in International Institutional Law: Colonial Inspirations" (2014) 25(3) *The European Journal of International Law* 645, 645-675.

<sup>29</sup> Franck et al., *supra* note 8 at p. 173.

<sup>30</sup> *Id.* at p. 177.

<sup>31</sup> This term is borrowed from G. Santayana, *Winds of Doctrine: Studies in Contemporary Opinion* (New York: Charles Scribner's Sons, 1913).

<sup>32</sup> F. Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford: Oxford University Press, 1999).

but on a reluctance 'to keep the ball rolling', that is, a desire to question ordered and agreed relationships. The implications of this discussion for the United Kingdom and the European Union are explored in sections 3 and 4.

## *II. Brexit: the roots of dissent*

Mr Boris Johnson, a protagonist of the 'Vote Leave the EU' campaign in the United Kingdom, delivered a personal message to the readers of a newspaper on the eve of the referendum. He wrote: 'tomorrow the people of this great country face an once-in-a-lifetime choice: ever closer political union inside a failing and anti-democratic EU, or freedom'..... The EU is undemocratic, bureaucratic and unrepentant for its failings. Tomorrow you have an once-in-a-lifetime opportunity to take back control. To lift our eyes beyond the strangulation of the EU, to co-operate and trade not just across the European continent but with the rest of the world.'<sup>33</sup> The view that EU is an undemocratic and bureaucratic organisation was not an invention of the 'Vote Leave' campaign in 2016. Such a line of reasoning has been disseminated in the public arena by the Right in the UK since the early 1990s. It has been underpinned by the belief that the national framework is the best institutional framework for democracy to work. And since national democracies derive their legitimacy from the 'unified will of the people', 'Europe' cannot be a democracy. It lacks a unified demos and a homogenising identity.<sup>34</sup> As Wallace noted in 1995, 'the Conservative Party's discourse is instinctively that of national identity'.<sup>35</sup>

As the 1991 Intergovernmental Conference was negotiating the Treaty on European Union (in force on 1 November 1993), Conservative Eurosceptics felt compelled to defend British national sovereignty against a possible federal scenario. They argued that the morphing of the European Community into a European Union was based on the false assumption that the nation-state had no future in Europe. They believed that the both the state, as a primary organisational concept, and British sovereignty were at risk and thus had to be defended. These beliefs were mandated by a particular way of viewing developments in Europe.

In fact, Baroness Thatcher's successor, Sir John Major, did not preside over a united Conservative party.<sup>36</sup> The entry into force of the Treaty on European Union (- the so-called Maastricht Treaty) was fuelling anxieties about the future of statehood in an integrated Europe. In late 1994, nine Conservative backbenchers defied Sir Major's policy on fishing rights in the House of Commons and eight of them were deprived of the party whip in January 1995. Refusing to accept this predicament, the Euro-rebels produced an eight point policy paper which called for the renegotiation of Britain's relationship with the European Union. In interviews and the media, they argued that further European integration threatened the 'survival' of the United

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<sup>33</sup> Published in METRO, Wednesday 22 June 2016 at p. 5.

<sup>34</sup> Dora Kostakopoulou, *Citizenship, Identity and Immigration in the European Union: Between Past and Future* (Manchester: Manchester University Press, 2001) at p. 9. This debate was anchored on the 'no-demos' thesis expressed by the German Federal Constitutional Court in Cases 2 BvR 2134/92 and 2159/92, *Brunner v European Union Treaty* [1994] 1 CMLR 57. For an excellent critique, see J. H. H. Weiler, "Does Europe Need a Constitution? Reflections on Demos, Telos and the German Maastricht Decision" (1995) 1(3) EUROPEAN L.J. 219, 219-58; U. Preuss, "Problems of a Concept of European Citizenship" (1995) 1(1) EUROPEAN L.J. 267, 267-81.

<sup>35</sup> Helen Wallace, "Britain Out on a Limb?" (1995) 66 *Political Quarterly* 47, 47-58 at p. 50.

<sup>36</sup> The discussion here draws on a Lecture I delivered at Durham University in February 2015.



Kingdom and that a different relationship with the EU based on free trade and friendship was needed.

Their ideology was distinctly nationalist and intergovernmentalist. The limitations imposed on 'national sovereignty' by the EU were perceived to result in the weakening of the national community of belonging and identity. The whipless Euro-rebels thus articulated a manifesto which demanded a reduced role for Britain in Europe. In the four page document they produced, they demanded the end of the Common Agricultural and Fisheries policies, the end to the Court of Justice's activism, a right to ban the export of live animals, an issue that was topical at that time, the UK's opt out from the European Monetary Union and the Common Foreign and Security policies and the abolition of the directly elected European Parliament. In its place, they suggested an assembly consisting of members of national parliaments nominated by the Member States. They also demanded the curtailment of the EU budget.

Although Sir Teddy Taylor, the most senior of the rebels, was insisting that their manifesto was not a direct challenge to the Government's policy on Europe, in reality their discourse was procuring a schism in the Conservative Party.<sup>37</sup> Their 'mission statement' to 'defend a sense of country' and their calls for the repatriation of decision-making from 'unaccountable and undemocratic foreign institutions' were influencing moderate Conservatives and public opinion. In its Editorial, *The Guardian* criticised those statements: 'These policies are not Euroscepticism. They are Europhobia. They are anti-Europe in every way. They remove any meaning or substance from membership of the European Union.' And it continued: 'An old-fashioned anti-European agenda like this ought not to be serious politics in the 1990s.'... 'The Europhobes have succeeded and are succeeding in dragging the Prime Minister, his party and thus the country even further off base'.<sup>38</sup>

The Prime Minister could not ignore the Euro-rebels' discourse. Preparations for the 1996 Intergovernmental Conference, which culminated in the Treaty of Amsterdam (in force on 1 May 1999), had commenced and, in an attempt to appease the Euro-rebels and to foreclose the possibility of a referendum on EU membership, he declared publicly that the UK would not join the single currency and that he would not agree to any further extension of qualified majority voting in the Council of Ministers. His Defence Secretary, Sir Malcolm Rifkind, delivered a speech in Brussels emphasising that the Union is a Union of nation-states, while Sir Major was stating internally that there was no need for a referendum because he would not accept any 'constitutional changes' during the negotiations for the amendment of the Treaties. Pro-European members of the Cabinet were marginalised and Lord Douglas Hurd, who had produced a paper on the 1996 IGC and had criticised the Euro-rebels' manifesto, was eventually forced to retire from the Cabinet in the summer (summer 1995). All this did not prevent Sir James Goldsmith to launch a new party, the Referendum Party. The Party had a single aim, namely, the enactment of a Referendum Bill. Sir Goldsmith stated that as soon as the Bill was enacted, the members would resign their seat and the party would dissolve itself.

The Euro-rebels and Sir James Goldsmith continued to call for an EU membership referendum in subsequent years. The same pressures that John Major encountered in 1995, Mr Cameron

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<sup>37</sup> Hugo Young, 'Grey clouds lift to reveal Major's bleak Euro-vision', *The Guardian*, 19 January 1995.

<sup>38</sup> *The Guardian*, Editorial, 20 January 1995.

encountered a decade later. Unable to appease his Euro-sceptic backbenchers, Mr Cameron entertained the idea of an EU membership referendum in 2010. In January 2013, he pledged referendum on the UK's continued membership of the EU if the Conservatives won the 2015 election. He subsequently sought a 'New Deal for the UK', which resembled the Euro-rebels' 1995 manifesto. The only major difference was the replacement of the dissatisfaction with the Common Agricultural Policies with the EU free movement regime.

In his letter to the President of the European Council (10 November 2015), Mr Donald Tusk, Mr Cameron, outlined the British demands for a renegotiated EU membership.<sup>39</sup> Free movement rules and the Court's judicial activism remained key concerns for the Government, in addition to affirming the UK's opt-out from the Eurozone and enhancing competitiveness. The UK also sought the amendment of the Treaty's reference to 'an ever closer Union', an enhanced role for national parliaments which would involve a collective national parliamentary veto of EU legislative proposals, less 'Europe' in line with the principle of subsidiarity and the continuation of the UK's opt-outs from justice and home affair issues. Concerning the free movement of EU citizens (- it is noteworthy that the title used was not 'internal mobility', but 'immigration'), Mr Cameron requested extended transitional arrangements for future participating countries, tackling the alleged abuse of free movement provisions and taming the activism of the Court of Justice in this policy area. The most controversial proposal was the postponement of the application of the principle of non-discrimination on the grounds of nationality as regards the EU citizens' entitlement to in-work benefits and social housing. In this respect, Mr Cameron suggested a four year residency criterion and envisaged that all these proposals would form the content of an agreement which would eventually morph into a legal binding protocol which would be attached to the Treaties.

Although Mr Cameron wished for the UK to remain within the European Union, his commitment to the European Union project was not wholehearted. He had already succumbed to the pressure exerted by the Eurosceptic wing of his party and had pledged a referendum in 2010. Self-serving political ambition triumphed over political conviction and a commitment to 'the good' for the whole of Europe. In 2015, the same pressure led him to question fundamental, overarching principles of the European Union legal and political framework which had been settled since the late 1950s and the early 1960s, such as the role and powers of the Court of Justice of the European Union and the fundamental freedom of free movement and residence, one of the four pillars of the single market. Instead of leading both his party and the country, he allowed nationalist centrifugalism to dictate a new generative perspective which, unavoidably, weakened the 'case for Europe'<sup>40</sup> in the UK.

### **Britain's Special Folkdance**

Both the Eurorebels' manifesto in 1995 and Mr Cameron's proposals more than a decade later reflected the desire for the emasculation of state elites and the 'restoration' of British

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<sup>39</sup> The British Prime Minister's letter to the President of the European Council, Mr Donald Tusk, 10 November 2015; <https://www.gov.uk/government/publications/eu-reform-pms-letter-to-president-of-the-european-council-donald-tusk>, accessed on 18/03/2016.

<sup>40</sup> This is borrowed from Philippe de Schoutheete, *The Case for Europe; Unity, Diversity, and Democracy in the European Union* (Boulder: Lynne Rienner, 2000).

sovereignty by loosening the ties with the European Union. This, in effect, implied the questioning of the European Union *acquis*, the dissolution of legal and political obligations undertaken voluntarily several decades ago and the restoration of unanimity in European Union decision-making. In such a discourse there is little appreciation for the institutional layering and the legal and procedural interweaving that have taken place during the European integration process. One discerns quite clearly the worshipping of a rather illusionary notion of state sovereignty.<sup>41</sup>

True, the temper of the age has facilitated the dissemination of such arguments. The austere economic climate and the ensuing sense of uncertainty leave room for ideological scripts, patriot games and a generalised belief that 'confrontation politics' yields results. In addition, while austerity programmes take hold in several European countries and the debate about how to make undisciplined public expenditures more controllable and sustainable continues in a lively way, we notice the rising of intolerance towards Europe's ethnic residents and citizens, neo-nationalism, populism and Euro-scepticism. This is not something new. Conservative forces have always exploited economic circumstances in order to capture the political imagination and to provide simplistic narratives with a view to attracting votes.

The European Union's free movement rules are depicted as the problem despite the fact that declining living standards, youth unemployment and shrinking welfare budgets are the product of domestic economic policy choices as well. Anti-Europeanism is vocalized through a patriotic-nationalist discourse which extols 'national sovereignty', 'repatriation of powers from Brussels' and migration control. Elites find it easier to convince people that national institutions are the best promoters of individual welfare and advancement and the best managers of socio-political contexts. It does not matter if socio-political and economic realities in a globalised era demonstrate that no single institutional actor can accomplish things and find solutions without the manifold input of other institutional actors.

In the 21<sup>st</sup> century all polities in the Western World are more or less compound republics and this compounding is unlikely to be reversed partly because issues, challenges and problems are transnational in character or in their effects. Compounding also increases respect for the rule of law precisely because 'the governed' cannot evade the partial control of institutions above them. It thus reduces 'dominocracy', that is, the power of elected majorities and leaves a more circumscribed space for governments 'behaving badly'. For this reason, the European Union-based compounding has to be dismantled. Brexit means Brexit, after all.<sup>42</sup>

Leaving the European 'pactum unionis', to use a Hobbesian term,<sup>43</sup> would mean a return to a world in which democracy and accountability become again equated with national sovereignty, closure and non-intervention. And this not only forecloses the possibility of further

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<sup>41</sup> See H. J. Laski, *Studies in the Problem of Sovereignty* (New Haven: Yale University Press, 1917); N. G. Onuf, "Sovereignty: Outline of a Conceptual History" (1991) 16 *Alternatives* 425; N. McCormick, "Liberalism, Nationalism and the Post-Sovereign State" (1996) 44(3) *Political Studies* 553; "Beyond the Sovereign State" (1993) 56(1) *Modern Law Review* 1; Dora Kostakopoulou, "Floating Sovereignty: A Pathology or a Necessary Means of State Evolution?" (2002) 22(1) *Oxford Journal of Legal Studies* 135; Neil Walker, *Intimations of Global Law* (Cambridge: Cambridge University Press, 2014).

<sup>42</sup> The British Prime Minister, Mrs May, has repeatedly stated this.

<sup>43</sup> T. Hobbes, *LEVIATHAN* (1651).

democratisation in practices and institutions but also reduces the possibilities for citizens to hold their leaders to account by utilising norms and rules higher up. Breaking the 'pactum unionis' would thus strengthen the authority of the nation-state and the 'national-statist pactum subjectionis' as far as citizens and residents are concerned. Affirming the primacy of everything national thus benefits most national executives who would be able to shield their rule from the checks and balances that characterise complex societies and unions of states and peoples.<sup>44</sup>

If we reflect further on the serviceability of the discourse surrounding the EU membership referendum and the political options in view, we could identify more concrete harms on individuals and the society, in general. For both the discourse and the specific issue of EU migration, which featured at the heart of the UK's renegotiation package,<sup>45</sup> have impacted directly on individuals, irrespective of their nationality and residence. They disrupted the bonds of social fellowship generated by working together in society<sup>46</sup> and have created 'othering'. Such artificial divisions are exploited by the right wing press in order to arouse irrational fears and prejudice among the population. Boundary lines are drawn and redrawn: workers are distinguished from work-seekers; workers are divided on the basis of their nationality; newly arrived 'EU migrant workers' are distinguished from permanent EU residents and so on. Anti-EU migrant agitation is driven by the irrational fear of propelled stereotypes.

Othering is essentially about distancing: keeping ourselves apart from those who we wish to depict as Others. And distancing could be physical, that is, manifested in strict border controls and/or the building of walls separating the 'ins' from 'outs', or spatial. In the latter case, the space is fractured and boundary lines are drawn. It could also be social and psychological. The latter happens when the Other shares the same space but (s)he is made to feel that (s)he does not belong to it. The Other's empirical presence is thus denied in law and (s)he is kept apart by policies which pose obstacles to his/her full inclusion.

By seeking to narrow the social bonds and ties, however, the openness of the British society and its cosmopolitan outlook are compromised. Individuals are no longer interested in taking part in the wider community of 'human argument and aspirations'.<sup>47</sup> Instead, they focus on safeguarding state resources from 'welfare tourists'. The public discourse becomes defensive. Although the UK's has failed to provide empirical evidence to substantiate the 'benefit tourism' claim despite the Commission's request, images of EU citizens as welfare seekers are created and manipulated so that the future itself can be manipulated. The Government constructs the narrative, fails to substantiate it empirically and then responds to it by seeking changes in the EU free movement regulations. There are no such things as simple facts; the political discourse involves constructs.

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<sup>44</sup> K. Nicolaidis, "This is my EUtopia...: Narrative as Power" (2002) 40(2) *Journal of Common Market Studies* 767, 767-92; Dora Kostakopoulou, "Conclusion: Towards a Humanistic Philosophy of the European Union" in N. Ferreira and D. Kostakopoulou (eds.), *The Human Face of the European Union* (Cambridge: Cambridge University Press, 2016).

<sup>45</sup> It also featured in the Prime Minister's letter to the President of the European Council, Mr Donald Tusk, 10 November 2015, *supra* note 39.

<sup>46</sup> G. Simmel, "How is Society Possible?" (1910) 13(3) *American Journal of Sociology* 372, 372-391.

<sup>47</sup> It is cited in D. Held, "Principles of Cosmopolitan Order" in G. Brock and H. Brighouse (eds.), *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005), p. 10.

Such constructs can alter common-sense realities and affect societal relations. The society becomes unsettled and quietly altered as the narrative unfolds; it becomes more inward looking, restricted and less humane. The ability to share, to work together, to cooperate, to celebrate human creativity and innovation is impaired. The socio-political environment becomes narrow, constraining and immoral since human beings are stereotyped, pronounced to be burdens and problems and are seen with suspicion and contempt. Amidst the reality of negative perceptions and ill-feelings about EU citizens, morality becomes synonymous to 'stateways' and 'folkways'.<sup>48</sup> Otherwise put, it is framed as the morality of insiders, the members of the in-group, and not of an expanding circle of co-residents and co-citizens sharing the benefits and burdens of the commonwealth they construct with their multifarious activities.

For this reason, EU citizens became EU migrants in official discourses during the months preceding, and following, the referendum. As a consequence, EU citizens residing permanently in the United Kingdom find themselves caught in multiple realities.<sup>49</sup> Embedded within the webs of their everyday lives and their socio-political relations, they suddenly realise that the environment redefines their status and role within society by depicting them as guests or as outsiders. The relevant substratum underpinning their status, that is, the rights derived from the EU free movement rules and EU citizenship, is becoming irrelevant in British politics thereby changing their biographical situation. Both their identity and 'being here' can no longer be taken for granted since the post-referendum, nationalist 'we' might exclude them. A new system of relevancies is emerging anchored on British nationality or 'in-group' status. Nationalist centrifugalism thus creates internal divisions and exclusions.

### **Implications for the European Union: political dismantling and vaccination**

The discussion on the federalist experiments of the 1950s and 1960s revealed that federations fail owing to the absence of a clear political ideological commitment to the success of the federation. The historical discursive examination of the Conservative Party's Eurosceptic ideology confirmed it. State-centrism and nationalist ideology coupled with personal political ambition and defective leadership on the part of political protagonists are the crucial factors underpinning Brexit. But what are the implications of this for the European Union project? And how should Europe's leaders face the forthcoming withdrawal negotiations with Britain following the activation of Article 50 TEU?

The European Union is clearly troubled by the developments in the United Kingdom. It is characteristic of human nature to accommodate unexpected negative change by looking inward. By the latter, I refer to the tendency to look for shortcomings which could explain the Brexit decision in the process of European integration itself and the operation of the EU. For instance, it has been argued that since nearly 52% of the British referendum voters are dissatisfied with the EU, clearly there must be something wrong with it, or with its functioning. Or that the free movement rules have to be rethought in an age of austerity. Although such arguments are understandable, the foregoing discussion counsels caution towards accepting them.

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<sup>48</sup> W. G. Sumner, *Folkways: A study of Mores, Manners, Customs and Morals* (Boston: Ginn and Co, 1906).

<sup>49</sup> Alfred Schutz used this term in 1945. See his article entitled "On Multiple Realities" (1945) V *Philosophy and Phenomenological Research* 533, 533-576.

The European project has not suffered a fundamental defeat just because the political elites that mattered in the UK were not sufficiently committed to it. Nor does Europe need to change in order to accommodate the contemporary manifestations of nationalistic centrifugalism which the European project has been designed to transcend. The European Union needs to avoid its capture by the British Conservative Eurosceptics. By standing firm, affirming the values animating the European Union (Article 2 TEU) and the added value of its four fundamental freedoms, it will not compromise its operation, the ethos of internationalism, the connectivity among peoples and individuals it has fostered and the respect for fundamental rights and non-discrimination. The Bratislava Declaration, adopted by the 27 Member States on 16 September 2016, echoes this by stating that 'although one country has decided to leave, the EU remains indispensable for the rest of us'.<sup>50</sup>

Mrs May's Government finds inspiration, and guidance, in the world of the past. The ethos of partnership, political pragmatism, cosmopolitanism and the traditional openness of the British society have been left behind. In the future, the differences between the British self-interested and self-serving political choices, on the one hand, and the pursuit of a European common good through core principles, institutions, laws and policies, on the other, will be made visible. Policies based on misdiagnoses and on false and simplistic assumptions should not be allowed to define the European Union's future because years later we might realise that the future was inadequately described and imagined and thus the policies adopted were ill thought and ineffective.

Distancing, and insulating, the European Union project, from the British Eurosceptic cognitive map and policy menu might be wise. For any attempt to seek some kind of policy convergence or ideological conformity with the Eurosceptic demands on the part of the European Union institutions would undermine the 'case for Europe'. An increased and resolute commitment to the European Union project is the only vaccine against nationalistic centrifugalism.

In addition to increased levels of political commitment, pragmatism should prevail in the post-Brexit era. The European Union needs to continue its operation without either being consumed by Brexit or exaggerating its impact. The absence of a political commitment to the EU in the UK is not a prelude to the disintegration of the European project. Nor does it show that a new vision or a new purpose is needed for the European Union. The UK's disentanglement must be pursued in constructive exit negotiations in accordance with the requirements of Article 50 TEU.

Brexit marks a definite turning point for the United Kingdom; constitutional, political, judicial and economic change will not be simply iterative there. It will be fundamental. Shielding the EU from those dynamics is essential in the interim period. United not only by the purpose, values, objectives and policies of the European integration process but also by what they refuse to destroy, European leaders and institutions need to rise above disruptive challenges and to resist the winds of nationalistic dogma and populism. An increased commitment to the case for a united Europe governed by its treaties and its values is the only vaccine against the agendas of national political elites wishing to exercise political power unimpaired and to act without accountability or embarrassment in the 21st century.

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<sup>50</sup> It was adopted by the European Union Council in Bratislava. The President of the European Council, the Presidency of the Council of the EU and the Commission also proposed the Bratislava Roadmap, that is, a work programme designed to make 'a success of the EU'; <https://www.consilium.europa.eu/.../2016/09/pdf/160916-bratislava...>

## Implications for integration theory

The historical discursive approach surrounding the failed federalist initiatives in the past and the roots of Brexit placed an increased emphasis on agency-related factors, discourse and their entanglement with broader temporal and spatial dynamics. Time and space are crucial contextual components of any account of how, why and under what conditions political integration dynamics and outcomes change. Situated in time and space, the principal actors' perceptions, beliefs, political and ideological commitments are important in explaining both fission and fusion in regional integration projects.

Strands of institutionalism and constructivism could accommodate this.<sup>51</sup> Ideas and norms are key aspects of institutional analysis in so far as they influence how and what people decide and thus the overall process of institutional development and change.<sup>52</sup> Although both social constructivism and sociological institutionalism<sup>53</sup> view institutions as independent variables containing ideas, norms and values that shape actors' identities and preferences, more emphasis on actor-based non-linear change is needed. The power to create new inter-subjectively shared meanings via discursive practices which are repeated over time should not be underestimated (i.e., the EU is allegedly undemocratic),<sup>54</sup> for these, under certain conditions, can lead to aperiodic change.<sup>55</sup>

Placing greater salience to agents' capacity to undo stable systems, create new narratives and to construct new realities helps to overcome the structuralist bias inherent in the institutionalist literature<sup>56</sup> as attested by its preference for 'stable reproductive processes and patterns of behaviour'<sup>57</sup> and for the privileging of structure over agency.<sup>58</sup> Certainly, 'path-dependent'

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<sup>51</sup> It is premised on the idea that social practices, patterns of behaviour and the organisations that people create in order to regulate such patterns are shaped by formal and informal rules, practices, legal arrangements, conventions, regularised ideas, norms and routines. Institutions are thus key explanatory variables in accounting for social interaction – notwithstanding the existence of considerable divergence as to how they do this and how, why and under what conditions they change.

<sup>52</sup> M. Finnemore, "Norms, Culture and World Politics: Insights from Sociology's Institutionalism" (1996) 50(2) *International Organisation* 325, 325-47; J. Goldstein, *Ideas, Interests and American Trade Policy* (Ithaca: Cornell University Press, 1993); J. Goldstein and R. O. Keohane (eds), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca: Cornell University Press, 1993); P. Hall, *The Political Power of Economic Ideas: Keynesianism across Nations* (Princeton: Princeton University Press, 1989); M. Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (Cambridge: Cambridge University Press, 2002); P. M. Hirsch, "Sociology Without Social Structure: Neoinstitutional Theory Meets Brave New World" (1997) 102(6) *American Journal of Sociology* 1702, 1702-23.

<sup>53</sup> Compare here A. L. Stinchcombe, "On the Virtues of the Old Institutionalism" (1977) 23 *Annual Review of Sociology* 1, 1-18.

<sup>54</sup> North concedes that he does not provide a full account of the role of ideas in the process of institutional change, but he, nevertheless, acknowledges their importance; D. C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990) at pp. 85-6. Constructivist perspectives remedy this. See J. G. Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge" (1998) 52(4) *International Organisation* 855; E. Adler, "Seizing the Middle Ground: Constructivism in World Politics" (1997) 3(3) *European Journal of International Relations* 319, 319-63.

<sup>55</sup> Dora Kostakopoulou, "Ideas, Norms and European Citizenship: Explaining Institutional Change" (2005) 68(2) *THE MODERN L. REV.* 233, 233-67.

<sup>56</sup> Institutionalism has been seen to be more successful in accounting for institutional stability than for institutional change; Jeffrey Stacey and Berthold Rittberger, "Dynamics of Formal and Institutional Change in the EU" (2003) 10(6) *Journal of European Public Policy* 858, 858-83, at p. 859.

<sup>57</sup> North, *supra* note 54; P. Pierson, "The Limits of Design: Explaining Institutional Origins and Change" (2000) 4(13) *Governance* 474, 474-99.

dynamics of institutional change have been supplemented with ‘path-shaping’ ones in the dynamic variant of historical institutionalism articulated by Hay<sup>59</sup> and in Schmidt’s discursive institutionalism.<sup>60</sup> But in addition to the role played by ‘crises’ or ‘ruptures’ and their capacity to trigger evolutionary institutional dynamics and paradigmatic shifts,<sup>61</sup> we saw the importance of the cumulative evolution of the British Eurosceptic discourse, the continuous political pressure actors exerted since the 1990s, misjudgements, defective leadership and the presence of politicians, such as Mr Farage, Mr Gove and Mr Johnson, the leaders of the Brexit campaign, who make views appealing and legitimate. In other words, in seeking to understand what fractures political Unions close attention should be given to agency.

In all this, timing is crucial. Strong path-dependencies can explain Mr Cameron’s proposals as well as the ‘sovereignty’ maintenance preference of Eurosceptic MPs in the UK. But they cannot explain the popular appeal of this agenda among citizens disadvantaged by austerity and by other regional economic dislocations. Nor can they explain the circulation and reception of ‘no to Europe’ ideas which had not been embedded within the formal institutional setting and did not resonate with long-standing institutional frames and policies for almost fifteen years.<sup>62</sup> Hence unanticipated developments, such as the Brexit vote in June 2016, which require adjusted theoretical frames. Space and time thus intersect and impact on the (re-)production of discourses and their reception by the population. Pre-existing knowledge, personal ambitions, political commitments and ideology all play a role in the formation of actors’ perceptions of the surrounding environment, their belief systems and choice of actions. Maintaining the relationality and the interlocking of situated agency, discourse and space-time is an important finding of the foregoing discussion on what fractures political unions.

## Conclusion

Reflecting on the European Union in 1996, I wrote that ‘it is a good example of a community of “concern and engagement”, for what unites the various units together in the European venture is neither some shared conception of Europe’s destiny nor a cohesive identity in a communitarian sense. Rather, what binds them in a Union is their commitment to the future of

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<sup>58</sup> It is generally acknowledged that institutionalism privileges structure over agency. Hay’s ideational institutionalism sought to overcome this by paying attention to changes in paradigms arising in moments of perceived crisis. Policy change emerges as a ‘punctuated evolution’; C. Hay, “The Crisis of Keynesianism and the Rise of Neoliberalism in Britain: An Ideational Institutional Approach” in J. L. Campbell and O. K. Pedersen (eds), *The Second Moment in Institutional Analysis* (Princeton, NJ: Princeton University Press, 2001). For a comprehensive account of institutional theories, see A. Heritier, *Explaining Institutional Change* (Oxford: Oxford University Press, 2007).

<sup>59</sup> C. Hay, “Constructivist Institutionalism” in R.A.W. Rhodes et al. (eds), *The Oxford Handbook of Political Institutions* (Oxford: Oxford University Press, 2006), pp. 56-74.

<sup>60</sup> V. Schmidt, “Taking Ideas and Discourse Seriously: Explaining Change Through Discursive Institutionalism as the Fourth New Institutionalism” (2010) 2 *European Political Science Review* 1, 1-25; “Discursive Institutionalism: The Explanatory Power of Ideas and Discourse” (2008) 11(1) *Annual Review of Political Science* 303, 303-26.

<sup>61</sup> Hay, *supra* note 59.

<sup>62</sup> My argument differs here from the premises of discursive institutionalism which examines ideational variables in the context of institutional and/or interest-based variables; V. A. Schmidt and C. M. Radaelli, “Policy Change and Discourse in Europe: Conceptual and Methodological Issues” (2004) 27(2) *West European Politics* 183, 183-210, at p. 184 et seq..



the Union, in the sense of working together towards creating “an ever closer union among the peoples of Europe” while preserving and respecting the distinctive identities of its members. In this process there is neither consensus nor indeed certainty about the juridico-political shape of the outcome. There is only an active concern and willingness on behalf of its units to participate in the collective shaping of this process by designing appropriate institutions’.<sup>63</sup> If such a political commitment is absent, the Union is susceptible to fragmentation and fission.

Brexit signals the absence of a political commitment on the part of the ruling Conservative elite in the UK. The only vaccine to the risks posed by it for the European Union itself is an increased resolve on the part of the twenty seven Member States to transcend the winds of neo-nationalism and populism and to demonstrate confidently to national elites, Europe’s citizens and residents and to the rest of the world that the European Union’s normative and systemic architecture is strong enough to accommodate flight.

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<sup>63</sup> Kostakopoulou, *supra* note 34 at p. 103.